IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18147 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESH RAMJILAL NATH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18147 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MR AY KOGJE, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 19-12-2003, by which he is detained under P.A.S.A. as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference of one solitary criminal case registered against the petitioner under the Bombay Prohibition Act. The detaining authority has also considered the statement of certain witnesses.

2) Mr.Prajapati, learned advocate for the petitioner has submitted that detention of the petitioner on a solitary case is not proper as it may not amount to disturbing public order. He submitted that at the relevant time, the petitioner was in police custody in connection with the offence in question, which is a non-bailable offence. Even when the petitioner was not moving freely in the society, the Police Commissioner has passed the aforesaid order of detention. It is also not properly stated that as to on what basis the authority has reached to the conclusion that after the remand period is over, the petitioner will move a bail application and he will be released on bail. In support of his argument he has relied on the decision of this Court in the case of Naresh alia Lalo Babubhai Vs. State of Gujarat & Ors. reported in 2002 (1) G.L.H. 528, which deals with more or less similar situation where the detenu was in police custody at the time of passing the detention order. In the said judgement, the learned Single Judge has observed in para 7 and 8 as under :

" 7. In light of the said decision, considering the facts of this case, there is no observations made by the detaining authority in the grounds of detention that any bail application has been filed by the petitioner in respect of the offences registered against him. There is no averment to the effect and there was no material with the detaining authority to have the reasonable apprehension of the petitioner's release on bail and to indulge in the same activities again after release on bail.

8. There was no material before the detaining authority to have some reasonable apprehension about the petitioner to be released on bail. Therefore, considering these facts of the case, according to my opinion, the detaining authority has not applied mind properly. It amount to nonapplication of mind. In view of such nonapplication of mind on the part of the

detaining authority, subjective satisfaction is not established, looking to the facts of the present case."

3) In the instant case also, the petitioner was in police custody at the relevant time and since the fact of the above case to that extent is similar to the present case, the present petitioner is also required to be released on the aforesaid ground of petitioner being in police remand at the time of passing the detention order and there is no sufficient material to explain as to on what basis the detaining authority has reached to the conclusion that the petitioner may move an application for bail and he may be released. On this limited ground this petition is required to be allowed.

4) However, it is clarified that in case of habitual offenders under Prohibition Act, the concerned Magistrate should be careful about the past conduct of such accused before granting the bail. Mr.A.Y.Kogje, learned AGP pointed out that normally in such cases bail orders are passed liberally. In the instant case, even in future if any such incident occurs and bail application is preferred before any Magistrate, it is for the Public Prosecutor to point out before the Magistrate about the past activities of the accused so that bail application can be properly decided and ultimately, it is for the concerned Magistrate to decide such bail application on its own merits. Mr.Kogje, learned AGP has submitted that the State may be permitted to prefer an application for cancellation of bail. This Court is not required to say anything on this aspect. If there is any material with the State Government, it is for the State Government to prefer such application for cancellation of bail and the accused can defend such application. Naturally, this order will have no effect on any such proceedings.

5) For the reasons state above, this petition is allowed. The order of detention dated 19-12-2003 is quashed and set aside. The detenu, Mahesh Ramjilal Nath is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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